

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

JAMES COCHRAN,
ADC #122317

PLAINTIFF

V.

5:12CV00063 BSM/JTR

RODERICK E. JOHNSON, Lieutenant;
and RAYMOND GRIFFITH, Sergeant,
Arkansas Department of Correction

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new,

different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a “Statement of Necessity” that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

I. Discussion

Plaintiff, James Cochran, is a prisoner proceeding *pro se* in this § 1983 action. On May 4, 2012, he filed a Motion for Default Judgment against separate Defendant Roderick Johnson. *See* docket entry #21.

A default judgment is appropriate when a defendant fails, without sufficient cause, to timely file an answer or responsive pleading to the complaint. *See* Fed. R. Civ. P. 55; *Stephenson v. El-Batrawi*, 524 F.3d 907, 912-14 (2008). An answer or responsive pleading must be filed within twenty-one days of service of the summons and complaint. Fed. R. Civ. P. 12(a)(1)(A).

Defendant Johnson was served by certified mail on February 27, 2012. *See* docket entry #5. He timely filed his Answer, seventeen days later, on March 15, 2012. *See* docket entry #11. Thus, he is not in default.

II. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's Motion for Default Judgment (docket entry #21) be DENIED.
2. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal would not be taken in good faith.

Dated this 16th day of May, 2012.


UNITED STATES MAGISTRATE JUDGE